



## Planning Commission Minutes

April 29<sup>th</sup>, 2019

Members of the Planning Commission met this day in regular session at City Hall, Brownsville, Oregon at 7:00 p.m.

**Present:** Commissioners Don Andrews, Gary Compton, Josh Kometz, Rob Wingren, Mike McDaniel, Steve Schilling, Kaye Fox, Planning Consultant Dave Kinney, Administrative Assistant Elizabeth Coleman, & City Administrator Scott McDowell.

**Absent:** None.

**Public:** Bud Landers, Patty Landers, Chris Harrison, Jad Lemhouse, Sherri Lemhouse, Donny Nealon, Debbie Nealon, DJ Nealon, Doug Block, Kim Clayton, Lacey Meadors, Gail Erickson, Jan Schilling, Merritt Schilling, Jack Alsman, Crystal Smith, Timothy Smith, Richard Hall, David Dodson, Brian Vandetta, Susan Richards, John McKinney, Joel Kalberer.

**Presiding:** Gary Compton.

The Pledge of Allegiance was recited.

The meeting was called to order at 7:00 p.m.

### PUBLIC HEARINGS

#### **Annexation – West Bishop Way Map & Taxlot 13S03W36D02500**

Chair Compton explained the process of the hearing and the required statutory statement regarding appeals. Chair Compton asked if there were any conflicts of interest, biases, or ex parte contact. Commissioner Schilling said he is part owner of property west of the subject parcel. Commissioner Compton asked if Commissioner Schilling could make an impartial decision based on the findings of facts, relevant policies, & ordinances adopted by the City of Brownsville. Commissioner Schilling stated yes.

Mrs. Coleman summarized the Staff Report. Tax Lot 2500 is a 16.57- acre parcel west of Hwy 228 with 15.20- acres inside the City limits & 1.37-acres of land that is located outside the City limits and zoned UGA – LI (Urban Growth Area – Limited Industrial) under Linn County Zoning. All of the land is located inside the Urban Growth Boundary. The applicant, Mr. McKinney, has requested the annexation of the 1.37-acre area into the Brownsville City limits and a rezone to match that of the larger 15.20-acre area, LI (Light Industrial).

The area outside the City limits is currently landlocked and utilities are not available without annexation. The land is surrounded by existing residences, EFU (Exclusive Farm Use) Land, and a commercial business.



## Planning Commission Minutes

The Planning Commission's role for this application is to determine whether the request meets the Comprehensive Plan & Zoning policies for the City of Brownsville, and recommend Council approve or deny the application based on those findings. Chair Compton provided the applicant the opportunity to present.

The applicant's representative, Joel Kalberer of Weatherford Thompson, presented the application. Annexing the 1.37-acre area would allow for future development and the extension of utilities to a currently landlocked area.

Chair Compton opened the hearing to the public for proponents and opponents of the application. Patty Landers, property owner north of the subject property, opposed the annexation.

There was a question regarding the Urban Growth Boundary and how expanding it would affect farmland. Mr. McDowell said as part of the Council Goals, the City is working on a Buildable Lands Inventory to determine whether Brownsville has enough land to meet the growth forecasts for the next 20+ years. In most areas of town, the City limits & the Urban Growth Boundary lines overlap. Planning Consultant Dave Kinney added that one of the Statewide Planning Goals for Oregon is to provide a 20 – 25-year supply of vacant buildable land for housing, commercial, industrial & public activities. To accomplish that, an analysis of those categories is completed. If that analysis can show there is enough land for those purposes, a UGB expansion is not required. If deficiencies are found, those areas would be addressed, and the impacts on farmland, wetlands, slopes, & the City's ability to provide public utilities. etc., would be taken into consideration. Mr. Kinney explained the process further for additional clarification.

Chair Compton re-iterated the Commission's role for the annexation, which is to determine if the request meets the goals and policies of the Comprehensive Plan and to recommend denial or approval of the request to City Council. Chair Compton closed the public portion of the hearing for Commission discussion.

Commissioner Kometz agreed with staff's conclusion that the application meets the goals and policies of the Comprehensive Plan. Commissioners Wingren & Andrews agreed that annexing the landlocked area makes sense from a zoning and development standpoint. Commissioners Schilling, Fox & Compton concurred.

*Commissioner Andrews moved to recommend to the City Council approval of the application to annex 1.37- acres of the 16.57-acre parcel, west of Hwy 228, and the adopt the Findings of Fact in the staff report dated April 11<sup>th</sup>, 2019. Commissioner Kometz seconded and the motion passed unanimously. Mr. Kinney articulated the process for City Council review.*



## Planning Commission Minutes

### **Conditional Use Application – McKinney RV Park W Bishop Way Tax Lot 2500**

Chair Compton explained the process of the hearing and the required statutory statement regarding appeals. Chair Compton asked if there were any conflicts of interest, biases, or ex parte contact. Commissioner Schilling stated he is part owner of an adjacent property and decided to recuse himself from the Conditional Use Application portion of the hearing.

Mrs. Coleman clarified the decision-making process involving the Conditional Use application in relation to the land outside the City limits. Since the 1.37-acre area is not located inside the City limits, and the annexation of the 1.37-acre area of the 16.57-acre parcel has not been approved by City Council, the Planning Commission is authorized to make a decision on the area inside the City limits (15.20-acre area) only. If the annexation is approved by City Council, the Planning Commission will decide whether to extend the development to the remaining 1.37-acres at a future meeting. No public hearing is required.

Mrs. Coleman presented the staff report. The applicant, John McKinney of Liberty Country LLC, submitted a Conditional Use application to construct and operate a full service 304-space Recreational Vehicle Park. The proposal includes a 10,000 square foot building with laundry service, showers, restrooms, dump station, office, small store, and a small caretaker's residence. The caretaker's residence is allowed only secondary to the primary Light Industrial Use. The subject property is located west of Hwy 228, Bishop Way, Taxlot 2500, in the Light Industrial Zone. Additionally, the adjacent parcel, Tax lot 2400 is part of the proposed development. Development in that area is subject to approval of a Replat to add approximately 3.0-acres of Tax Lot 2400 into Tax Lot 2500. The RV park is proposed for 3 phases, depending on the economy. One letter of opposition was entered into the public record.

Agency comments were provided by the Brownsville Fire Department, City Engineer and the Public Works Superintendent regarding the proposal. The Brownsville Fire Chief and Oregon State Fire Marshal determined two entrances and exits would be required for this proposal, due to the potentially large number of vehicles and people in the area.

The City Engineer and Public Works provided an extensive list of requirements necessary to ensure the water/sewer demand for the RV park would not cause a negative impact on the City's utilities. As the proposed use would be accessed via Hwy 228, the applicant shall meet ODOT's requirements, such as a possible Traffic Impact Analysis. The Brownsville Comprehensive Plan and the Brownsville Municipal Code outlines several areas to be addressed by the applicant for Conditional Uses & Light Industrial Zone uses. Some requirements involve floodplain management/development, landscaping plan and buffers, adherence to City development standards, drainage and erosion, lighting, hours of operation, & compatibility with surrounding uses. The applicant has not submitted a site plan that addresses these issues. Prior to any development, a final development plan shall be submitted, reviewed, and approved by the City. The applicant proposed hours of operation as 6am – 8pm.



## Planning Commission Minutes

One of the major concerns regarding the RV park application was the length of stay. The City does not allow long term occupancy in a recreational vehicle. The application states the RV park is for short term stays only. The Planning Commission was encouraged to discuss that concern & provide a condition of approval to address it. Additionally, FEMA (Federal Emergency Management Agency) advises municipalities to prohibit permanent residency in RV parks located in the Floodplain. As the property is located within the 100-year floodplain, the applicant will be required to meet the Brownsville Municipal Code Chapter 15.05 Special Flood Hazard Areas as well as any FEMA requirements to ensure the proposed use will not negatively affect the historic water levels or impact the surrounding neighbors.

Commissioner Wingren asked about water metering for the park; the applicant's engineer will be required to provide calculations to the City Engineer and Public Works to determine metering. Commissioner Fox asked if noise in the RV park would be addressed; the City has a noise ordinance, and staff recommended a condition of approval to address quiet hours in the Park Rules. Discussion ensued.

Mr. Joel Kalberer of Weatherford Thompson presented the application. Mr. Kalberer mentioned the Conditions of Approval proposed in the staff report are acceptable and reasonable. The applicant proposed a maximum 45-day stay for the RV park and emphasized the park is not intended for residential use and will not be used in that manner.

According to the Oregon Landlord Tenant Law, after 45-days the occupant is considered a tenant and no longer vacationing. The RV park will provide opportunities for families to visit the Brownsville area. Mr. Kalberer also mentioned the two RV parks that were approved by the Planning Commission in 2006 & 2007, both in the Light Industrial zone and the floodplain. The applicant proposed 304 units, 104 in Phase 1, but understands 304 units may not come to fruition. The intent of the park is seasonal and not anticipated to be full in the winter months.

Mr. Kalberer addressed the compatibility issues in the area; the plan is to provide a secluded area that does not conflict with neighboring uses, a berm for landscaping to deter noise and light, & keep users within the park. Mr. Kalberer stated the property is in the 100-year floodplain and measures will be taken to ensure balanced cut and fill, grading, and no volumetric change in the floodplain. The applicant agreed with compliance requirements the Public Works & City Engineer reviews provided. Mr. Kalberer said he and the applicant were open to suggestions regarding the park.

Commissioner Andrews asked about the tent camping in the northeast area of the park; Mr. McKinney said the intent is for users within the RV park, kids, grandkids, etc., rather than outside use. Commissioner McDaniel asked about sidewalks, the applicant said gravel paths and walkways will be construction within the project.



## Planning Commission Minutes

Chair Compton provided the opportunity for proponents and opponents of the application to speak. Jad Lemhouse, 714 Loucks Way, spoke to conditions of the surrounding area and great concern that placing a berm around the property will create a dam and cause flooding to the surrounding properties. Traffic impact, theft & trespass of his property, access, & the burden on taxpayers for utilities were also mentioned.

Donny Nealon, 27535 Pearl Street, was also concerned about the berm diverting water to his property, enforcement of operating hours, excessive traffic in & out of the property & security. Mr. Nealon was also concerned that the RV park could become a long term stay without enforcement, potentially causing numerous calls to law enforcement. He opposed the use due to the issues it could bring.

Patty Landers, 27536 Pearl Street, was concerned about the potential for a large amount of people in a small area, noise, negative impact to wildlife, flooding, and the site becoming an undesirable residential park. Mrs. Landers appreciates the closeness of Brownsville and understands the need for the City to expand gradually but does not agree the site is suitable for a big RV park.

Vern Landers, 27536 Pearl Street, spoke emphatically against the proposal. He did not want an RV park in the back of his house. The only thing separating the use is a berm.

Arliss Mischler, 898 West Bishop Way, has five children who are learning to drive, and he is concerned the additional traffic from the RV's will be a problem & needs to be addressed. He was also concerned about security.

Susan Richards, 219 W Blakely, was concerned about a RV park near the wastewater area, traffic, gas stations being able to support all the RV's, the aesthetics of a RV park in town, impact to wildlife, access, transients & length of stay.

Sherri Lemhouse, 714 Loucks Way, who has private access to the river was also concerned about trespass & theft on her property. She asked the Commission to consider a 30 day stay in 365 days, 14 days in a 30-day period, to keep from a permanent type occupancy. Public safety, traffic impact between the proposed RV's & trucks from McFarland Cascade, & flooding were also concerns.

Jack Alsman, 405 Spaulding Avenue, spoke firmly against the proposal. He did not see how the proposal would benefit Brownsville. Mr. Alsman was also concerned about noise, trash, and partying at the RV park. He said we need to work together to keep the town how we want it. What he loves about Brownsville is the solitude and quiet. Mr. Alsman felt citizens should have a say in what goes on in this town.

Merritt Schilling, of Schilling LLC, Advanced Mechanical, 34777 Hwy 228, thanked Mr. McDowell and staff for the report as most of his questions were answered. Advanced Mechanical stores a lot of equipment & materials on the premises and he would like to see the security issue addressed.



## Planning Commission Minutes

Eric Gerber, 325 Fisher Street, said as a former Commissioner he understood the position of the Commission and thanked them for serving. Mr. Gerber mentioned a difference between the previously approved RV parks (Hume Street) and the current proposal (Bishop Way) is there are several residences surrounding the property vs. a city shop & the river. Mr. Gerber has had experience with berms along his property line and the issues of excessive water for long periods of time and possible damage to the hazelnut & walnut trees. Mr. Gerber mentioned the flood levels have changed over the years & development has impacted the floodplain and surrounding areas. Mr. Gerber was also concerned about the length of stay and possible impact on the school district.

Gail Erickson, 806 West Bishop Way, was concerned about her property flooding, as it is lower than the subject property. Mrs. Erickson also mentioned the 1996 flood where emergency vehicles had to take her from her home.

DJ Nealon, 1117 Pine Street was mostly concerned about security and the lack of screening for RV park guests; damage can still be done in a short term stay park. He encouraged business owners to visit surrounding areas of RV parks to hear the responses from property owners. Mr. Nealon mentioned the flooding issue can be dealt with but is the risk worth the reward in terms of town security.

Patty Landers, 27536 Pearl Street, also mentioned the 1996 flood that caused evacuation by boat, happened in a very short time. If a flood occurs and a large number of vehicles try to exit the park at the same time, issues can occur.

Chair Compton gave the applicant an opportunity to speak to the concerns. Mr. Kalberer thanked those who provided comments. The berm was to be a barrier in terms of people, lighting & noise. Anything that will involve building, digging, etc. will require a cut and fill permit from DSL (Department of State Lands). If DSL determines a berm is not a proper solution, other options will be found. A fence may be a better option. To address the theft concern, Mr. Kalberer stated there will be a caretaker on the property 24 hours a day, and the use is not for long term stays, such as Diamond Hill.

Mr. Kalberer agreed traffic will need to be evaluated by ODOT; it is also a Condition of Approval. The area closest to the Landers' property is proposed to be for tents, to reduce impact to the neighbors. Mr. Kalberer re-iterated that any industrial use in an industrial zone will have some type of impact on the neighbors. As the project is a Conditional Use, conditions can be imposed to mitigate adverse impacts. A RV park seems to be the least impactful industrial use. The applicant encouraged comments and continued dialogue from the neighbors.

Chair Compton closed the public portion of the hearing for Commission discussion. Chair Compton asked Mr. Kinney to remind the audience what types of uses are Permitted Outright in the Light Industrial zone and what are considered as Conditional and require Planning Commission approval. Some examples of Outright Permitted Uses and their accessory uses, per the Brownsville Municipal Code are lumber yard, fabricated metal products, carpentry shop, parking lot or parking garage, warehouses, mini storage, mobile home & recreational vehicle sales, machinery, farm equipment sales, service, truck sales,



## Planning Commission Minutes

rental and storage. All uses must comply with the City's code and requirements (i.e. flood development, traffic impact, parking); none of those uses require public review or approval from the Planning Commission.

Examples of Conditional Uses in the Light Industrial Zone are schools, nursing homes, churches, recreational vehicle parks, fire stations. Conditional Uses are reviewed by staff, outside agencies and the Planning Commission for compliance with the City code. Conditions of approval can be imposed. Mr. Kinney mentioned it would be difficult for the Planning Commission to impose conditions of approval that would fully address all issues where law enforcement is involved. Discussion ensued.

Commissioner Andrews asked about the effect on residences built in an area of industry before the zoning code was established; these homes are considered pre-existing, non-conforming, and can be rebuilt, however, industrial uses can be built around them.

Commissioner Kometz said he would like a traffic study completed for the project. Commissioner Wingren mentioned if the use is zoned Industrial, a recreational vehicle park may be less impactful than a log storage site. The Commission cannot say no to the use but can place conditions and make a decision based on criteria and the Comprehensive Plan, rather than opinion and feelings. Commissioner Wingren also had concerns regarding traffic and the floodplain. He would like more information before deciding. There can be benefits to a RV park if done well, and issues can arise if not.

Chair Compton said he would like to find a balance; the owner has a right to develop the land, yet he understood the concerns of the neighbors regarding flooding. Compton was also concerned about the number of RV's in the park, the buffer between residences and the RV park, and the effect on wildlife. He would like to see a second proposal that addresses those concerns.

Commissioner McDaniel mentioned the floodplain issues can be addressed; he was more concerned about security. RV parks can be very profitable if done right, fencing the entire property may provide additional security. Commissioner Fox agreed security fencing should be considered. Commissioner Andrews agreed a traffic study should be completed and would like additional information before deciding. Commissioner Kometz encouraged open dialogue between the surrounding property owners and the developer to address the concerns without animosity. There are other industrial uses that could be allowed on the property that may be less desirable to neighbors than a RV park.

Staff and the Commission discussed the options for continuance of the hearing. After extensive discussion, the Commission decided to take written comments until June 7<sup>th</sup>, 2019, the applicant will be provided the opportunity to respond to the submitted comments by June 13<sup>th</sup>, 2019 and the Commission will re-convene at 7:00pm on June 17<sup>th</sup>, 2019. That portion of hearing was closed. The Chair asked for a 5-minute recess.



## Planning Commission Minutes

### Variance Request to Access Standards - Richard Hall & Timothy Smith 368 Spaulding Avenue

Chair Compton explained the process of the hearing and the required statutory statement regarding appeals. Chair Compton asked if there were any conflicts of interest, biases, or ex parte contact. None were spoken.

Mrs. Coleman provided a summary of the request for a Variance to access standards in the High-Density Residential zone. The applicants, Mr. Richard Hall & Timothy Smith of S&S LLC have proposed to partition land at 368 Spaulding Avenue and create a flag lot, allowing one access to accommodate three parcels.

Chair Compton mentioned the four criteria to be addressed for approval of a Variance, if the proposal is denied, the Planning Commission shall provide reasons for the denial. Chair Compton mentioned Criteria #2, that states the property rights of the owner would be otherwise curtailed without a variance. The staff report's conclusion for Criteria #2 determined the Brownsville Municipal Code allows outright development of the parcel for multi-family dwellings.

The applicants' consultant, Dave Dodson, Willamette Valley Planning, presented the proposal. Mr. Dodson pointed out challenges located on subject property such as easements, storm drainage, & water/sewer line placement. Mr. Dodson also mentioned the limited access location for the parcel due to the proximity of the Mill Race. The Brownsville Municipal Code's access standards require a minimum of fifty feet of frontage per lot but allows a Variance to access standards via flag lots when applicable. The Planning Commission has approved Variances to allow flag lots of similar widths in the past.

Mr. Dodson mentioned the proposal provides maximum development potential, approximately six, three-story multi-family dwellings per parcel, depending on lot size. However, future developers may decide to build single family residences, townhouses, duplexes, etc. Mr. Dodson spoke to staff's requirement to obtain maintenance agreements for the onsite storm drainage and retain on one lot. Mr. Dodson also concurred with the staff's recommended conditions of approval for the proposal.

Commissioner Fox asked how the Mill Race would be affected by this proposal. Mr. Dodson mentioned the Mill Race would not be altered but preserved. The proposal is located at least forty feet from the Mill Race.

Commissioner Wingren clarified with Mr. Dodson the applicants request for a Variance is to provide the developers the opportunity to have separate ownership of each parcel and develop accordingly. Each parcel could have a different residential use (single family, three-story, duplex, etc.).

Chair Compton opened the public portion of the meeting for comments. Doug Block, 350 Spaulding, was concerned about possible issues arising from the number of people in a small area with traffic, parking, etc. Gary Shepherd, 331 Kirk Avenue, was concerned





## Planning Commission Minutes

about additional traffic on such a narrow street with access located on a corner, drainage onto his property, maintenance of the ditch, the instability of the wall located along the perimeter of the property, and his property values.

Kim Clayton, 350 Spaulding Avenue, was concerned about overflow parking onto Spaulding. If parking is full on the site, cars may park along the street, creating a hazard.

Chair Compton allowed the applicant to address the public concerns. Mr. Dodson addressed the street safety concern; the proposal provides a right of way extension for sidewalks with curbs and gutters. The wall should be removed and replaced with a fence. Drainage calculations will be provided by a certified engineer and reviewed by the City Engineer and staff for compliance. Mr. Dodson re-iterated the layout provided is for maximum development, based on that, the required parking is 27 spaces, and the proposal provides 38 spaces.

Mr. Kinney asked the developer's engineer to address the water quality question. Brian Vandetta, Udell Engineering & Land Surveying in Lebanon, said Brownsville's Public Works Standards do not provide stormwater quality requirements. The proposed storm chamber will detain the water over a certain period of time, and trap catch basins with oil & water separators will be used. The engineer's responsibility is to analyze soil conditions, slope, etc. to calculate water volume, discharge rates, and to ensure the water release rate isn't impacted when the land is developed.

Commissioner Wingren asked if the drainage currently runs into the Mill Race, Mr. Vandetta explained the water goes into a storm drainage swale south of the Mill Race. Mr. Shepherd interjected, stating there is no storm drain and water runs onto his property. Mr. Udell responded; Oregon Drainage Law requires the downstream property owner to accept naturally occurring surface water from the upstream properties, & the upstream properties cannot increase the rate/level of surface water traveling onto the downstream properties. The proposed plan will be required to meet Oregon Drainage Law. Discussion ensued.

Mr. Dodson re-iterated that the High-Density Residential zone allows property owners to build what is currently being proposed (18 multi-family units) outright. The developers are interested in partitioning the land to allow the option of a different type of development plan (single family, duplex, multi-family) on each parcel. Mr. Vandetta added the proposed development plan is conceptual only and shows the highest and best use of the property. Mr. McKinney added the Variance could allow any combination of residential uses permitted in the High-Density Residential zone.

Applicant, Mr. Richard Hall, added the developers that are interested in purchasing this property are moving in the direction of the proposed conceptual plan of multifamily units. Mr. Hall is interested in triplexes or fourplexes. The Variance to partition the land would provide him flexibility to build smaller units.



## Planning Commission Minutes

Chair Compton closed the public portion of the hearing for Commission discussion. Commissioner Wingren said most of his questions were answered. He mentioned the area is zoned for High Density use, although it's a concern for the neighbors, the Planning Commission wouldn't be allowed to change the zoning for that specific reason.

Chair Compton mentioned to approve a Variance, all four criteria must be met; he did not believe Criteria #2, which states "the property rights of the owner will be curtailed without a variance" was met for the proposal. Staff provided in the staff report the Brownsville Municipal Code permits the applicant to construct a multi-family dwelling in the High-Density Residential zone. A Variance request does not affect the number of units allowed on the parcel. Chair Compton appreciated the reasoning behind the request from the applicants to increase flexibility for the parcel, but the basic requirement of a hardship was not met because the applicant can build to maximum capacity without a Variance.

Commissioner Andrews agreed Criteria #2 cannot be met and added there are other development alternatives for the property. Commissioner Schilling asked about the number of living units allowed on a parcel. Mrs. Coleman explained the square footage of a lot in the High-Density Residential zone determines what can be built. Commissioner Schilling agreed a hardship is not present, the property can still be developed. Discussion ensued. Commissioners Fox & Kometz agreed Criteria #2 could not be met.

*Commissioner Andrews moved to grant the Variance, subject to conditions of approval, and to adopt the Findings of Fact and Conclusions in the staff report dated April 22<sup>nd</sup>, 2019. Commissioner Wingren seconded. The voted ended with a 6-1 vote against the application.*

Chair Compton explained the applicant may appeal the Planning Commission's decision to City Council. Mrs. Coleman will provide a Notice of Decision to the applicant within 5 days of the hearing.

There being no further business to discuss, the meeting was adjourned at 10:38pm.

ATTEST:

---

Elizabeth E. Coleman  
Administrative Assistant

---

Gary Compton  
Commission Chair